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22 May 2026

The Treasury

Via portal: https://consult.treasury.gov.au/c2026-756975

Curbing lead generation activity

Executive summary

In the wake of the catastrophic consumer harm in the Shield and First Guardian disasters, the Super Members Council recommends a general ban on lead generation to make all consumers safer.

In doing so, we draw a clear distinction between lead generation and safe, legitimate communications to a member – such as information about their super from their own super fund, or access to information about a workplace super fund provided by an employer/union.

Banning lead generation is the most effective way to stop devastating consumer harm before it occurs – and it will also curb the regulatory and cost burden on advice licensees of overseeing lead generators. It does not rely on consumers being able to read impenetrable disclosure documents or to absorb accelerated verbal disclosures at the start of a call they did not invite, neither of which they are realistically able to understand or act on in the moment. It also lightens the conduct and compliance obligations that would otherwise sit on advice licensees, because it deals with the problem at the source rather than building layers of disclosure, consent and oversight machinery on top of an activity that should not be undertaken in the first place.

Banning lead generation is the single most effective safety intervention in this interlocking package of crucial consumer safety reforms proposed by Government. This is because it stops much harm before it occurs – before a consumer's money is lost. Changes further up the regulatory chain are likely to result in a regulatory framework where much consumer harm still occurs, then regulatory action is taken after the damage is done (e.g. for breach of AFSL or adviser obligations). At this point, money has already been lost by consumers - and will likely then have to be compensated via the CSLR.

A ban on lead generation would be supported by:

- a licensee "reasonable steps" backstop (Consultation paper Option 1c) to close a workaround in which operators obtain an AFSL or CAR authorisation to evade the prohibition;
- mandatory consumer-initiated contact and a narrowed personal-advice exemption to hawking limited to existing clients (Consultation paper Options 2a and 2b together), to close both ends of the funnel;
- comprehensive remuneration reform capturing lead generators within the conflicted remuneration framework and narrowing the "benefit given by client" exemption so that fees deducted from a consumer's super balance are no longer characterised as fees from the client (Consultation paper Options 3a and 3b, with 3b the single most important change);
- mandatory AFSL displayed on super advertisements and expanded ASIC stop-order powers with a "reasonably believes substantial consumer harm" threshold (Consultation paper Options 4a and 4b);
- principled reconciliation with DBFO Tranche 2, so that trustee nudges are a defined safe harbour with strict structural requirements and any communication failing those requirements falls into the prohibited activity; and
- matched enforcement resourcing for ASIC and integration with the CSLR sustainability reforms so the cost of harm sits with the actors who created it.

This reform recommendation is deliberately structural: it targets the activity, not the licensing status of the operator. As explained further into this submission, the licensed-unlicensed distinction is not where the consumer harm lives, best exemplified by the fact that two of the lead generators in the Shield and First Guardian cases were licensed operators.

All three Treasury reform packages must work in unison

The Government's three interlocking Treasury consultations – 1) lead generation, 2) member protections, 3) the Compensation Scheme of Last Resort – are crucial in the wake of the Shield and First Guardian disasters. Their interlocking design has been crafted to better protect consumers at each point of weakness in the current safety armour.

1. **Lead generation** is the front end of the chain that produced the Shield and First Guardian losses: it identifies, qualifies, and pre-scopes consumers for delivery into an advice and product channel.
2. **Member protections** must also work at the middle of the chain, addressing how trustees, advisers and product distributors handle members once they are inside the system.
3. **The Compensation Scheme of Last Resort** sits at the end of the chain, picking up the cost of harm when the earlier safeguards have failed and remediation cannot be recovered from the entities responsible for causing devastating consumer losses.

The Government must legislate concurrently to deliver the reforms in all three crucial areas of these interlocking consumer safety consultations to comprehensively fix gaping holes in consumer safety. If it seeks to tackle them separately, there is a grave risk of leaving some safety gaps unfixed, and of displacing harm rather than stopping it, with an ever-escalating compensation bill still careering out of control. A lead generation ban would strengthen consumer protections from the start, resulting in less consumer harm and fewer claims on the CSLR. Conversely, weak protections from lead generation will translate directly into continuing consumer harm in the middle and compensation costs at the end.

About this submission

The submission expands briefly on this by examining the definition of lead generation and the consumer harm it inflicts. By contrasting legitimate marketing and communications activity against lead generation models, it sets out a definition capable of supporting a prohibition across both licensed and unlicensed activity without harming those legitimate functions. The submission then assesses the policy options Treasury has canvassed.

Answers to Treasury's consultation questions are set out in Appendix A.

About the Super Members Council

We are a strong voice advocating for the interests of 12 million Australians with over $1.9 trillion in retirement savings managed by profit-to-member super funds. Our purpose is to protect and advance the interests of those millions of super fund members throughout their lives, advocating on their behalf to ensure super policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

The story of a scam

For most victims of Shield and First Guardian, it started with an advertisement: a post on Facebook, Instagram or TikTok for a free "compare your super", "a super health check" or "find your lost super". It asked users to fill in a short form with a promise for someone to be in touch to help.

What followed was not help - it was a sales script. The call typically came from a call centre, staffed by people who were not financial advisers and held no licence to give advice.

The caller was warm, sounded knowledgeable, was worried on the consumer's behalf, and offered a solution: ‘your current fund is underperforming’, ‘you're paying too much in fees’, ‘we've got an adviser who can run the numbers’.

By the time the consumer met the adviser, a decision to switch their super had effectively been made. The "advice" was often pre-drafted, the recommendation was almost always the same: switch your super into a new platform or SMSF and to put a significant amount into the Shield Master Fund or First Guardian, or both.

As we now know, both these managed investment schemes (MIS), collapsed and almost 12,000 Australians lost an estimated $1.2 billion of their life savings – money to support them in retirement.

One of the victims was Melinda Kee, a 55-year-old who lost around $400,000 — money she had asked to be diversified across shares and property, but which her adviser instead placed 100% into First Guardian. Melinda has urged regulators and policymakers to “*Look at the head of the snake not the tail.*"[1]

Other victims have spoken of crying through the night, of going to work the next morning with red eyes, of the dawning realisation that the retirement they had spent decades building was gone. Many believed, as one victim put it, that “*superannuation was a ‘government guarantee*’[2]."

‘Lead generation’ leads the scam

The sales process that funnelled these consumers is called lead generation. Stripped of its normalising language, it is high-pressure sales — engineered, industrialised, and pointed directly at people's retirement savings.

A network of operators runs ads, harvests data, qualifies the lead, makes the cold call, books the meeting, and then hands the consumer to an adviser who pays them a cut of the fees the consumer will end up paying out of their own super.

AFCA’s recent determinations have concluded that lead generators — unlicensed, with no duty to the consumer — took 70% of the initial advice fee and 40% of ongoing fees in some cases. In other words, the consumer was paying, out of their retirement savings, for having a super product sold to them[3].

Due to gaping holes in the current consumer safety armour, this sales model skirts compliance. Each link in the chain — the ad, the form, the call, the meeting, the advice document, the product — has been carefully arranged so that no single party appears to break the law.

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[1] https://www.thesenior.com.au/story/9130028/first-guardian-shield-master-super-funds-collapse-victims-speak/

[2] *The Nightly*, "First Guardian, Shield super collapse: Spotlight investigation into how $1.2b in retirement funds were lost" – https://thenightly.com.au/australia/first-guardian-shield-super-collapse-spotlight-investigation-into-how-12b-in-retirement-funds-were-lost-c-19844469

[3] *Professional Planner*, "Shield, First Guardian lead generators received cut from advice fees", 23 January 2026 – https://www.professionalplanner.com.au/2026/01/shield-first-guardian-lead-generators-received-cut-from-advice-fees/

– The hawking prohibition doesn't apply because the cold caller never makes an "offer" about a specific product (and the hawking prohibition does not apply to an offer, request, or invitation made in the course of giving personal advice);
– The Best Interests Duty doesn't catch the lead generator because that work was done upstream, by people the duty doesn't reach; and
– The conflicted remuneration ban doesn't apply because fees ostensibly come from the adviser, even though they are deducted directly from the consumer's super.

Current laws were written for a one-step sale. But the sales process described above breaks the sale into ten compliant-looking steps, enabling consumer safety to be dismantled on an industrial scale.

The scale of the problem

Ideally research released by SMC in May 2026 found that 45% of Australians on social media had recently seen these types of predatory super ads in their social media feeds. More than 70% said they could not tell the difference between a scam and a legitimate communication from a financial institution. Sixty-three per cent did not realise these ads were the same machinery that drove the Shield and First Guardian collapses.

Four in five Australians said they want the Government to ban these ads outright.

Defining lead generation

A workable definition of lead generation, accompanied by appropriate carve-outs for the activities described above, would combine five elements (with no one element standing in isolation):

– *Intermediation*: The operator isn't the seller; they capture consumer interest to pass to someone else.
– *Data capture*: Consumer information is systematically collected (e.g. forms, quizzes), not incidental to a real client relationship.
– *Paid transfer*: Revenue depends on passing or converting the lead, not just providing information.
– *Product focus*: Activity targets a specific product or service (e.g. super switching), not general engagement.
– *Engineered funnel*: Consumers are moved through a designed pathway (qualification, contact, handover) towards a sale.

Working definition

"Lead generation" means an activity carried out for commercial benefit that involves (a) collecting or capturing information from consumers, or making consumer interest discoverable by another party, in relation to a specified class of financial products or financial services, and (b) transferring, referring, or making available that consumer interest to another person who provides, or arranges the provision of, those financial products or services, where the operator's commercial benefit is calibrated, in whole or in part, to the act of transfer or to a transaction occurring as a result.

Understanding the harm of lead generation

The lead generation model highlighted in Shield and Guardian has become pervasive in financial services, particularly focused on super. Lead generation is the process of identifying potential customers ("leads") and capturing their interest or contact details so they can be marketed to, referred onwards, or converted into a sale. It spans everything from a social media ad and a 'super health check' website through to a salesperson making a follow-up call. Under the model, lead generators make an initial connection with a potential customer, pre-warm them with a conversation to generate a consent for further communication and refer the consumer into the sales funnel to elicit a conversion via a super switch.

ASIC's February 2026 *Review of advice licensees using lead generation services* (Media Release 26-029MR) is notable, identifying 44 lead generation entities. These comprise 21 referral partners and 23 advice licensees or corporate authorised representatives that acquired leads. The ASIC report lists a series of consumer red flags, with lead generation contact:

– Claims people's super funds are underperforming;
– The offer of a "super health check";
– Prizes or free "lost super" offers; and
– Pressure to act now.

The Ideally research for the Super Members Council found 70% of consumers cannot distinguish these types of scams and pressure sales tactics from legitimate contact from their own super fund or another reputable institution.

The critical issue for Australia's financial services laws is that lead generation circumvents existing financial services laws and acts as a form of *regulatory arbitrage* (exploitation of loopholes, differences and inconsistencies in laws and regulatory frameworks across different jurisdictions) that must be fixed to ensure that Australians can have strong confidence and trust in the safety of the super system. Australians shouldn't be asked to distinguish legitimate communications from high pressure sales.

Lead generation steps around the hawking prohibition in s992A of the Corporations by disaggregating what the law treats as a single act of cold-selling across multiple parties and stages, each of which can look compliant in isolation. At the front end, click-bait ads and "free super health check" landing pages harvest broadly-drafted consent buried in terms and conditions, which the operator then treats as authorising any downstream party to make contact – so when the call comes, it isn't "unsolicited" within the meaning of the section. The cold caller is then carefully scripted to avoid making an offer in relation to a specific financial product (offering only a "review" or an "appointment"), which means s 992A's offer element isn't engaged by their conduct at all. Any taint from that real-time contact is then "cleansed" at the back end by the personal-advice exemption: once the consumer is in front of a financial adviser bound by the best interests duty, the offer of the product is made within a setting exempt from the hawking prohibition, even though the persuasion, urgency and pre-scoping of the advice question have all been done upstream by parties the BID doesn't reach. The statute was drafted for a one-step sales transaction; the model breaks that transaction into compliant-looking steps, so the current prohibition never bites cleanly on any one of them.

On the financial advice side, the lead generation activity also effectively pre-frames the scope of the advice before the lead is handed over and the individual becomes an advice client. Under section 961B of the Corporations Act, advisers are required to identify the subject matter of the advice sought by the client, with the Best Interests Duty anchoring advice to that defined scope. It was a critical design of the Future of Financial Advice Reforms (FOFA). Lead generation models can short-circuit this process. The client often arrives with a pre-determined objective scoped outside the advice engagement–for example, a belief that they should switch superannuation funds due to perceived underperformance/high fees. The adviser's role then becomes one of responding to that stated objective, rather than independently eliciting and defining the client's needs. In this way, the lead generator's role–undertaken well before the adviser becomes involved–is to shape and embed the advice question in the consumer's mind. In some cases, this process is highly systematised. Leads may be provided to advisers with pre-prepared files that include a defined objective (such as switching or consolidating superannuation) and, at times, a draft scope of advice or engagement document. In certain models, the consumer may have already signed an authority to proceed or acknowledged a Financial Services Guide before the adviser has even reviewed the file.

Distinguishing lead generation from financial literacy, general advice and conventional marketing

ASIC's February 2026 definition of lead generation – "a marketing activity designed to create consumer interest … with a goal of persuading consumers to purchase" – is overly broad. It captures ordinary super fund engagement that has nothing to do with lead generation, from brand advertising (e.g. billboards) through to direct outreach.

Treasury's formulation is narrower and more useful but again lacks specificity, defining lead generation as the "process of identifying potential customers to whom products or services can be marketed or offered," and then breaking this into three distinct types:

– Attracting consumers to a site or program where information about them is captured;
– Initiating real time outreach; and/or
– Directing or referring consumers to another provider.

Framed too widely, these definitions risk capturing legitimate activities – superannuation funds' financial literacy content for members, their own brand and marketing activity, future DBFO targeted prompts ("nudges"), retirement 'cohorting' and member communications, ASIC's Moneysmart content, and even a journalist's article comparing super fund returns.

It is important to recognise that lead generation sits adjacent to legitimate categories of conduct, and the boundary between them is not always clear. The line can shift depending on how the activity is structured.

Areas considered in our definition of lead generation

- Financial literacy and consumer education has no commercial benefit tied to a specific provider (it for the benefit of good consumer decision making), no data capture for downstream commercial use, no referral pathway into a sales funnel, and content that is generally provider-agnostic. The line can blur in cases such as a "compare your super" tool on a social media site.

- General advice under s 766B of the Corporations Act must be provided under an AFSL and involves a recommendation or opinion about a financial product. It is not personalised and must be accompanied by a general advice warning. The line blurs where lead generators interpose a corporate authorised representative (CAR) into the funnel to provide general advice as part of the sales pathway. The CAR may comment on super fund performance in general terms, or on the merits of switching as a general proposition, without addressing the consumer's specific circumstances. That conduct is regulated as financial product advice, but it can still function as an intermediate qualification and persuasion step in a lead generation model – the two characterisations are not mutually exclusive.

- Conventional marketing and advertising is the broadest category of fund communications and includes brand campaigns, product advertising, sponsorships and content marketing. It involves funds promoting their own products, not selling consumer interest to third parties. These communications are typically broadcast or directly targeted, but are not built on capturing consumer data for downstream transfer. The pathway is direct: promotion to website to application or sale. The advertiser bears regulatory obligations under the Corporations Act and the Australian Consumer Law. While modern digital advertising is increasingly data-driven, it remains distinct from lead generation. An "are you in the right fund?" campaign may resemble lead generation on the surface, but the structure differs materially. Lead generation follows a chain of ad to data capture to qualification to sale of consumer data to adviser contact to product recommendation, which is not present in first-party fund marketing.

- Pure referral or introduction occurs where a professional refers a client in the ordinary course of providing a primary service. It is incidental to that service, not a standalone business model, and does not involve a scaled funnel or volume-based financial incentive. The line can blur in cases such as comparison websites that assess superannuation funds and then refer users, or where an accountant introduces a client to a financial adviser for a fixed fee. The key difference is structural: lead generation relies on high-volume referrals as a core business model, with revenue dependent on converting consumer interest at scale.

- Workplace superannuation arrangements organised by industrial parties are not lead generation and should not be captured. Where an employer or union gives employees information about the super fund in their workplace, this is an employment-related activity, not a commercial intermediation funnel. It is not incentivised by any volume-based remuneration, and there is no third-party operator capturing consumer interest for paid transfer.

- Future-proofing for targeted superannuation prompts ("nudges") is also important. Nudges under DBFO Tranche 2 sit within a pre-existing fiduciary relationship: the communication is from the trustee to its own member, using data the fund already holds, with no third-party intermediation, no on-sale of consumer information, and no conflicted remuneration paid by an external product issuer. Lead generation blurs this line by mimicking the surface features of a nudge – an unsolicited, data-informed prompt about the consumer's super, framed as helpful guidance – while inverting the underlying structure: the communication originates from a commercially incentivised third party with no duty to the consumer, the "data" used is harvested through click-bait rather than held under fiduciary obligations, and the prompt is engineered to funnel the consumer into a product the operator profits from rather than to engage them with options on the merits. The resulting consumer experience is indistinguishable, which is what allows the funnel to launder itself as legitimate engagement. The fix is to define the permitted nudge regime by reference to its structural features – fiduciary relationship, member-of-this-fund, fund-held data, no third-party transfer of consumer information, no conflicted remuneration – so that any communication lacking those features falls outside the nudge 'safe harbour' regardless of how it is dressed up.

The policy options

SMC's preferred approach is a general prohibition on lead generation as a defined activity, applying to both licensed and unlicensed operators, supported by targeted elements from other reforms. This goes beyond Treasury's Option 1b, which only restricts unlicensed actors and would allow licensed operators–such as AFSL holders or corporate authorised representatives–to continue the conduct seen in Shield and First Guardian. A general prohibition targets the activity itself and avoids placing unnecessary compliance burdens on advice licensees to manage lead generation by their representatives and be the subject of regulator action for conduct by rogue lead generators.

Licensing is not the solution

Consumer harm does not turn on whether an operator is licensed, indeed two lead generators in the Sheild and Guardian cases were licensed. In these cases, harm arose from the structure of the lead generation funnel–intermediation, data capture, engineered scoping of advice and conflicted remuneration–regardless of licensing status. Regulating who conducts the activity, without addressing these features, risks recreating the same harm through different actors.

In fact, requiring licensing risks misleading consumers by conferring a veneer of legitimacy. An AFSL signals safety and oversight but does nothing to address the structural drivers of harm in lead generation. Without clear accountability for consumer outcomes, licensing is not only ineffective–it is actively misleading.

The case for a general prohibition rests on five observations

1. Harmful lead generation has no unique, legitimate role – its claimed functions (education, comparison, referral) are already delivered through regulated channels (e.g. Moneysmart, fund communications, professional advice, journalism).
2. The harm is inherent to the model: the funnel is designed to convert consumer interest into product sales through engineered pathways, and this risk exists regardless of whether the operator is licensed.
3. Attempts to regulate the funnel's components have produced limited results in adjacent regimes (spam, telemarketing, the existing hawking provisions, the conflicted remuneration regime) because operators iterate around the rules faster than the rules iterate around them.
4. The consumer protection asymmetry is stark: the costs of a prohibition fall on operators who can restructure their businesses or exit; the costs of inaction fall on consumers who lose retirement savings.
5. The regulatory enforcement asymmetry is similarly stark: ASIC's tools are largely ex post, the harm typically occurs before enforcement can bite, and the cost of remediation falls on the CSLR – meaning the costs of regulatory under-reach are externalised onto the broader financial services industry.

Treasury's 4 reform areas should be considered together, but are not of equal weight

The licensing and accountability question (reform 1) is foundational. It determines who and what is captured by the regime.

The remuneration reforms (reform 3) deal with the financial engine of the model; without them, the incentives to engineer a funnel remain intact regardless of how the front end is regulated.

The hawking and advertising reforms (reforms 2 and 4) deal with the consumer facing surface of the conduct. They are necessary but not sufficient: tightening consent or requiring an AFSL display on advertisements addresses the symptoms of the funnel, not the funnel itself,

Within Reform 1, Option 1c (a "reasonable steps" obligation on AFS licensees acquiring leads) is a valuable backstop: it closes the workaround in which an operator obtains an AFSL or CAR authorisation to evade a prohibition pitched only at unlicensed actors, and puts a direct duty on the licensees who currently profit from the funnel. Option 1a's licensing architecture should be retained as a regulatory tool for residual activity that warrants regulation but not outright prohibition.

Within Reform 2, both options should be implemented together: the consumer-initiated contact version of Option 2a is the strongest answer to engineered T&C consent, and limiting the personal-advice exemption to existing clients of the licensee (with "existing client" requiring a pre-existing advice relationship, not one constituted by the contact itself) closes the cleansing pathway central to the Shield / First Guardian model.

Within Reform 3, the most important single change is narrowing the "benefit given by client" exemption under Option 3b — fees deducted from a consumer's super balance are currently characterised as fees from the client rather than from the product issuer, sitting outside the conflicted remuneration ban; reversing this removes the doctrinal hook on which the licensed-operator model hangs.

Option 3a should sit alongside it to capture lead generators within the conflicted remuneration framework.

Within Reform 4, both options should be implemented as complementary measures: mandatory AFSL display under Option 4a is a baseline transparency reform consistent with the Scams Prevention Framework's digital platform advertiser verification obligations, and the expansion of ASIC's stop-order powers under Option 4b — with the threshold set at "reasonably believes the advertisement has caused or is likely to cause substantial consumer harm" — closes the timing gap between harm and regulatory intervention that has been the most consistent failing of the existing regime.

The preferred package therefore draws across all four reform areas: a general prohibition as the primary reform (beyond Option 1b), supported by Option 1c as a licensee backstop and Option 1a as a residual tool; both anti-hawking options (2a in its consumer-initiated form, 2b limited to existing clients); both remuneration options (3a and 3b, with 3b's narrowing of the client-benefit exemption as the single most important change); and both advertising options (4a and 4b). The package's effectiveness depends on the combined operation of all four components — the activity itself, the consent and exemption mechanisms, the remuneration engine, and the advertising surface — and partial implementation, or implementation targeting only the unlicensed slice, will produce predictable circumvention and the migration of harmful conduct from unlicensed operators to licensed ones.

Appendix A: Consultation questions

Policy problem section

Q1. What types of lead generation activities within the financial services sector provide consumer benefit?

SMC believes lead generation can be defined for regulatory purpose without impinging legitimate forms of consumer contact. On that basis there is no consumer benefit to business models that induce members to exit the safety of highly regulated super funds to chase returns in high-risk investments offered through platforms and SMSFs with limited trustee oversight. The distinction SMC draws is between lead generation – a commercial intermediation model built on data capture, paid transfer and an engineered funnel – and the legitimate adjacent activities of financial literacy, general advice, conventional first-party marketing, the provision of workplace super information, and pure incidental referrals. Those legitimate activities should not be captured by reform; lead generation, properly defined, should be.

Q2. How should lead generation activities be defined to target consumer harm without capturing legitimate marketing or information services?

The submission proposes a five-element structural definition: (i) intermediation (the operator, not the seller); (ii) data capture (information systematically collected, not incidental); (iii) paid transfer (revenue depends on passing or converting a lead; (iv) product focus (the activity targets a class of financial products or services); and (v) an engineered funnel (Consumers are moved through a predesigned pathway towards a sale), No single element should stand in isolation – all five should be present for the activity to fall within the definition.

Per the discussion in the paper, SMC suggests a working definition as follows:

"Lead generation" means an activity carried out for commercial benefit that involves (a) collecting or capturing information from consumers, or making consumer interest discoverable by another party, in relation to a specified class of financial products or financial services, and (b) transferring, referring, or making available that consumer interest to another person who provides, or arranges the provision of, those financial products or services, where the operator's commercial benefit is calibrated, in whole or in part, to the act of transfer or to a transaction occurring as a result.

Please note, this definition is narrower than ASIC's February 2026 formulations (which is over-broad and would capture brand advertising and member communications and more specific than Treasuries three-limbed definition. The definition can be supported by carve-outs defined by structural features (fiduciary relationships, no third party intermediation, no conflicted remuneration, financial literacy, first-part promotion of own products, workplace superannuation arrangements and DBFO Tranche 2 "Nudges"). These then fall out of the definition by design.

Q3. Does the business model used in the Shield and First Guardian cases raise any potential for unintended consequences in relation to any aspect of the Delivering Better Financial Outcomes reform package?

SMC notes that any decision not to progress the DBFO reforms concurrently with this consumer protection package would be a mistake and will lead to consumers continuing to be less safe than they should be. The advice reforms are a consumer protection in themselves and will help protect Australians from predatory social media ads and cold calling by enabling super funds to deliver more accessible, lower-cost guidance to members at scale.

By strengthening the ability of high-performing, tightly-regulated super funds which are governed by strong legal safeguards to deliver simple super and retirement advice to their own members, consumers will face fewer risks of lead generators luring them into higher-risk super products where they could lose their life savings.

Enabling access to affordable, targeted, simple advice and nudges at key life stages – particularly for younger people and Australians with smaller super balances and less complex advice needs – will boost engagement, strengthen financial literacy, and help them make good decisions about their super.

The DBFO reforms are key to deliver a comprehensive set of consumer safety protections in super.

‘Enhance accountability for the conduct of lead generators section’ - Licensing

Q4. Would reforms to require licensing for certain lead generation activities be an effective and proportionate way to curb harmful lead generation activities?

Licensing alone (Option 1a) is necessary but not sufficient. SMC's primary recommendation is a general prohibition on lead generation as a defined activity, applying to both licensed and unlicensed operators. Consumer harm does not turn on whether an operator holds a licence – two of the lead generators in the Shield and First Guardian cases were licensed. Harm arises from the structure of the funnel: intermediation, data capture, engineered scoping of advice and conflicted remuneration. Regulating who conducts the activity, without addressing those structural features, risks recreating the same harm through different actors.

That said, Option 1a's licensing architecture should be retained as a regulatory tool for residual activity that warrants regulation but not outright prohibition. The general prohibition is the primary reform.

Q5. What is the scope of activities that should be captured under the licensing reform? Should this be limited to activities in relation to superannuation?

Banned lead generation should not be limited to the licensing regime around super. Super is a key target due it typically being the largest financial asset a person has. While the Shield and First Guardian collapses involved super switching, the structural features of the funnel – intermediation, data capture, paid transfer, product focus, engineered pathway – are not unique to super and will migrate to other financial product categories if the regime is drawn narrowly. The scope should be activity-based, not product-based. For example, crypto and investment scams use plenty of the same tactics to target non-super wealth.

Q6. How should lead generation activities be defined to target consumer harm without capturing legitimate marketing or information services?

See response to question 2.

Q7. What would be the implication of banning all unlicensed communication about superannuation for commercial purpose? What exceptions or carve-outs would be required?

The key issue here is two lead generators responsible for helping distribute Shield and Guardian were licenced. So banning all unlicenced communications doesn’t automatically fix the problem. Option 1b's narrow framing – targeting only unlicensed actors – does not go far enough. It would allow licensed operators (AFSL holders and corporate authorised representatives) to continue the conduct seen in Shield and First Guardian, and would predictably accelerate the migration of harmful conduct from unlicensed operators to licensed ones via corporate authorised representative. The consumer harm is in the activity, not the licensing status. SMC’s preferred approach is a general prohibition on the defined activity, with carve-outs by structural feature to ensure legitimate trustee to member communication, fund marketing, financial literacy content and existing workplace arrangements that provide access to information about a workplace super fund, is not captured.

‘Enhance accountability for the conduct of lead generators section’ - Licensee accountability

Q8. Would reforms to impose additional obligations on AFS licensees using lead generators be an effective way to curb lead generation activities?

The best way to regulate lead generation is to ban it. Additional obligations mean additional regulatory burdens, so this is cleanest if the activity is banned. If 1c is considered, a reasonable steps obligation should be specified with at least the following elements: documented due diligence on lead sources (consent quality, source legality, target market alignment); retention and inspection of evidence of consumer-initiated contact or compliant consent; written records of any pre-scoping of the advice question by the lead source before handover to the adviser; and ongoing monitoring of conversion rates and complaints data as red-flag indicators. The objective is to ensure the licensee can demonstrate who generated the lead, what the consumer consented to, who was paid, and why the eventual advice or switch was appropriate.

SMC has separately called for an explicit clarification in ASIC's RG 234 Advertising financial products and services that any advertising or public communication about a superannuation product or trustee service that trustees and AFS licensees arrange, approve, sponsor, or otherwise cause to happen is treated as their own communication. This principle should extend to service providers operating on behalf of an advice licensee. Embedding this attribution principle in regulatory guidance complements the reasonable steps obligation by closing a related accountability gap: licensees should not be able to disclaim responsibility for upstream advertising and communication conduct that they have authorised, funded, or otherwise caused to occur, whether through a third-party lead generator, a marketing intermediary, or another service provider acting on their behalf. The combination of a statutory reasonable steps duty and an explicit attribution principle in RG 234 would ensure licensees are accountable both for the conduct of upstream actors they engage and for the communications those actors put into the market in their name.

This approach is consistent with the regulatory practice already applied to APRA-regulated entities, which have oversight obligations in respect of their service providers under prudential standard CPS 230 Operational Risk Management, and accountability obligations for key functions and under the Financial Accountability Regime. Extending similar obligations to advice licensees would align the regulatory architecture across the financial services system and remove the current asymmetry, under which advice licensees can rely on third-party intermediaries for material consumer-facing functions without the supervisory and accountability obligations that would apply if those functions were performed inside an APRA-regulated entity.

The combination of a statutory reasonable steps duty, an explicit attribution principle in RG 234, and an alignment with CPS 230 / FAR-equivalent oversight standards would ensure licensees are accountable both for the conduct of upstream actors they engage and for the communications and acquisition activities those actors carry out in their name.

We note all of this adds to the regulatory architecture, and so the cleanest way to deal with is simply to ban the activity based on clean definition of lead generation.

Q9. What additional obligations (if any) are appropriate to place on advice licensees using lead generation services to strengthen accountability and support effective enforcement?

As set out in response to Q8, SMC's position is that lead generation should not be permissible. The defined activity should be prohibited, applying to both licensed and unlicensed operators, with carve-outs defined by structural features. The question of what additional obligations should sit on advice licensees using lead generation services does not arise where the activity itself is prohibited because this solution is cleaner on licensees from a regulatory burden perspective. If a licensing-based approach is adopted instead of a general prohibition, advice licensees acquiring leads should be subject to a reasonable steps obligation covering:

- documented due diligence on lead sources (consent quality, source legality, target market determination);
- retention of evidence of consumer-initiated contact or compliant consent;
- written records of any pre-scoping of the advice question before handover to the adviser; and
- ongoing monitoring of conversion rates and complaints data as risk-flag controls.

This should be paired with an explicit clarification in ASIC's RG 234 Advertising financial products and services – which SMC has separately/previously, called for – that any advertising or communication about a superannuation product or trustee service that trustees or AFS licensees arrange, approve, sponsor, or otherwise cause to happen is treated as their own communication, including where carried out by service providers acting on their behalf. This closes a related accountability gap: licensees should not be able to disclaim responsibility for upstream conduct they have authorised, funded, or caused.

This is consistent with the obligations already imposed on APRA-regulated entities, which must oversee service providers under CPS 230 Operational Risk Management and are accountable for key functions – including marketing and customer acquisition – under the Financial Accountability Regime. Extending equivalent obligations to advice licensees would remove the current asymmetry, under which advice licensees can rely on third parties for material consumer-facing functions without the supervisory standards that would apply if those functions sat inside an APRA-regulated entity.

Q10. What penalties would be appropriate and effective in deterring misconduct?

Penalties should be set at a level that reflects the scale of harm caused and removes the commercial benefit of the conduct. The Shield and First Guardian cases involved tens of millions of dollars in advice and platform fees extracted from consumer balances over multi-year periods; penalties calibrated to small-business turnover will not deter conduct of this scale. Penalty design should mirror the Corporations Act maxima rather than the lower SIS Act levels and should include the option for ASIC to seek disgorgement of fees, commissions and client-flow benefits received through the prohibited activity, not only civil penalties.

‘Enhance accountability for the conduct of lead generators section’ - Design and distribution obligations

Q11. Would reforms to clarify and specifically extend the DDO obligations to lead generators be an effective way to curb lead generation activities?

DDO is designed to regulate product issuers and distributors – not the financial advisers who build portfolios and recommend products to clients. Advisers operate under a different regime: they are required to consider their client's personal circumstances and to comply with the Best Interests Duty. Lead generators sit a step further removed again. They do not explicitly distribute products and do not design them for a defined target market. What they do is prime the consumer toward the purchase of a product, often without clearly identifying what that product will ultimately be.

For an extension of DDO to be effective, it would need to apply across every link in the chain to conversion, rather than to isolated parties whose conduct appears compliant when viewed in isolation. The harm in the Shield and First Guardian model is not located in any one link – it is produced by the assembly of the chain, and a regime that captures only one part of it will be worked around by reorganising the rest. DDO would need to apply to parts of the conduct include financial advice.

Working through these consequences, we again believe, the cleanest way to deal with this is to ban lead generation as a defined activity.

Q12. What would be the implication of specifically extending the application of DDO to lead generators?

For DDO extension to be effective, there would need to be a clear line of connection between the lead generator at the front of the funnel and the target market determination of the end investment product. Without that connection, the extension does not bite – lead generators are simply characterised as facilitating an advice relationship, and advice sits outside DDO as excluded conduct.

This is the structural difficulty with Option 1d. Lead generators do not distribute products and do not design them for a target market; they prime consumers toward a purchase without clearly identifying what the product will ultimately be. In the Shield and First Guardian model, the specific product was named downstream by the adviser, inside the personal advice exemption – well after the lead generator's role had ended.

DDO extension is best progressed as a complement to the primary reforms, not as a substitute. It can close a gap on the issuer/distributor side but cannot, on its own, reach the structural harm. The only way for it to be effective is by applying DDO to the financial advice process also.

Working through these consequences, we again believe, the cleanest way to deal with this is to ban lead generation as a defined activity.

Q13. What issues would arise from clarifying that certain lead generation activities constitute retail product distribution conduct for DDO purposes?

Two issues warrant attention. First, the boundary between general marketing and retail product distribution conduct will require careful drafting to avoid capturing first-party fund advertising or generic comparison content. SMC's five-element definition (Q2) can do this work. Second, DDO's reasonable steps standard is risk-based; for it to bite on the lead generation pathway, the obligation should explicitly require issuers and distributors to consider the structural features of upstream lead sources (consent quality, remuneration arrangements, scoping conduct) rather than treating each consumer interaction in isolation.

‘Extend anti-hawking requirements’ - section

Q14. Would reforms to the hawking prohibition be an effective way to curb harmful lead generation activity?

The hawking prohibition has been structurally outflanked by the lead generation model: broad T&C consent removes the "unsolicited" element at the front end, and the personal advice exemption "cleanses" any residual breach at the back end. Reforming one end without the other simply shifts the workaround. Both options 2a and 2b would need to be implemented together to be effective.

Q15. How would a ban on non-consumer initiated real-time contact impact the offer of financial products and the provision of financial advice?

SMC supports the consumer-initiated contact version of Option 2a. The risk Treasury identifies – that genuine commercial referral arrangements and trustee-to-member communication may be inadvertently captured – is real but resolvable through the structural carve-outs identified in response to Q2: fiduciary relationship, first-party promotion, pre-existing client relationship. Trustee communication with members of the same fund, using fund-held data, with no third-party intermediation, would sit within the carve-out (and align with the DBFO Tranche 2 nudge safe harbour). Genuine professional referrals incidental to another service relationship would also fall outside the prohibition.

Q16. Would enhancing the consent disclosures made during the real-time contact with consumers ensure that engagement with lead generators and financial advisers is genuinely informed and voluntary, or are additional safeguards necessary?

Enhanced point-of-contact disclosure tends to operate in a way that discharges legal and risk responsibilities onto consumers but does not actually help them navigate the complexity between scams and normal communications with their financial services providers and superannuation funds. Disclosure alone does not correct the information asymmetry, the time pressure, or the engineered urgency of the call.

SMC’s research found that more than 70% of Australians said it was difficult to distinguish between predatory contact from legitimate communications from a financial institution. Stronger disclosure at the start of a call will not resolve that asymmetry.

SMC's primary position is that lead generation should be prohibited as a defined activity. This is the cleanest way to address the harm. It does not require consumers to read impenetrable disclosure documents or to absorb accelerated verbal disclosures at the start of a call they did not invite, neither of which they are realistically positioned to understand or act on in the moment. It also lightens the conduct and compliance obligations that would otherwise sit on advice licensees, because it deals with the problem at the source rather than building successive layers of disclosure, consent and oversight machinery on top of an activity that should not be occurring in the first place. The most effective intervention is to ban the activity. This approach aims to stop harm before it occurs, i.e. before consumer money is lost.

Q17. How would the removal of the personal advice exemption impact the provision of financial advice?

The personal advice exemption is an important carve-out. It allows advisers to genuinely consider the circumstances and needs of their clients and to make product recommendations accordingly, including where the consumer first engaged with the adviser through legitimate channels. Removing the exemption entirely would have significant practical implications for advisers operating with existing clients in the ordinary course of an advice relationship, and would impose additional friction on legitimate advice provision without addressing the underlying harm.

The exemption fails, however, when the client arrives at the adviser's door with a pre-scoped objective – typically to switch out of their existing super fund – that has been engineered upstream by a lead generator before the adviser is engaged. In that scenario the exemption functions as a cleansing mechanism rather than a protection: the persuasion, urgency and scope-setting have all been done by parties the Best Interests Duty does not reach, and the adviser's role is reduced to confirming an objective that has already been embedded in the consumer's mind. This is the pattern observed in the Shield and First Guardian cases.

For these reasons, SMC supports retaining the personal advice exemption but limiting its scope under Option 2b, so that it applies only where the adviser has a pre-existing advice relationship with the consumer (with "existing client" defined to require a pre-existing relationship, not one constituted by the contact itself). This preserves the legitimate function of the exemption – advice to clients the adviser already advises – and removes the function that has been exploited, which is the manufacturing of new clients through unsolicited contact and downstream cleansing.

Q18. Would limiting the operation of the exemption to existing clients or non-superannuation products provide appropriate protection for consumers?

SMC supports limiting the personal advice exemption to existing clients of the licensee, with "existing client" requiring a pre-existing advice relationship, not one constituted by the contact itself. The exiting client definition is the right test because it targets the harm directly. It preserves the advice relationship but removes the function exploited in the Sheild and Guardian model, which is manufacturing new clients through cold contact. The qualifier on “existing client” is essential: without it, operators will treat the first cold-call contact as the moment the advice relationship is constituted.

“Non-superannuation products” is not effective. It implicitly accepts that the pressure sales channel for other financial products is acceptable. Limiting by client status addresses the conduct; limiting by product type addresses only the most recent symptom.

Q19. Of the approaches canvassed under reform 2, which approach, or a combination of approaches, would be most effective in reducing unsolicited contact while preserving legitimate advice provision?

SMC’s primary position is that lead generation should be prohibited as a defined activity. The Hawking reforms are most effective when implemented alongside that prohibition. Within Reform 2, Options 2a and 2b should be implemented together and not as alternatives. The two options address two ends of the funnel that the Sheild and Guardian model exploited: Option 2a closes the front-end, where terms and conditions consent is harvested through click-bait advertising to manufacture a “solicited” consent; Option 2b closes the back end, where the resulting unsolicited contact is cleansed by handover to a financial adviser operating inside the personal advice exemption. Reform on its own can be worked around by reorganising the other end of the chain. Implemented together, they remove both pathways. The legitimate advice functions Treasury is concerned about preserving – advisers providing further services to existing clients, trustees communicating with their own members, professionals making incidental referrals in the ordinary course of another service relationship – all sit within the structural carve-outs identified in response to Q2 and are not captured by the combined operation of Options 2a and 2b in their stronger forms.

‘Target remuneration structures that may incentivise poor conduct’ - section

Q20. Would reforms to the conflicted remuneration provisions be an effective way to curb harmful lead generation activity?

SMC consider this one of the most important of the four reform areas, because it deals with the financial engine of the model. The funnel exists because the incentives and economics support it: lead generators receive a share of the advice fees the consumer ends up paying, and those fees are extracted from the consumer's superannuation balance over years. Without remuneration reform, the incentive to engineer the funnel remains intact regardless of how the front end is regulated, and operators will rebuild the model under whatever licensing, hawking or advertising framework Treasury and the Government settles on.

Both options 3a and 3b should be implemented. Option 3a captures lead generators within the conflicted remuneration framework and prevents licensees from interposing a third-party intermediary to break the remuneration chain. Option 3b narrows the “benefit given by the client” exemption so that the fees deducted from a consumer’s superannuation balance are no longer characterised as fees from the client. Together they address the two ways the FOFA conflicted remuneration ban is currently outflanked: directly, through payments to interposed third parties, and indirectly, through the characterisation of super-deducted advice fees as “client-paid”.

Of the two, Option 3b is the single most important change in the entire reform package. The "benefit given by client" exemption is the hook on which the licensed-operator model hangs — it is the reason the Shield and First Guardian arrangements, in which advice fees were deducted from consumer super balances and then split with unlicensed lead generators, sat outside the conflicted remuneration ban despite being economically identical to the conduct the ban was designed to prevent. Removing that hook resolves the central regulatory failure exposed by these cases.

Q21. What lead generation remuneration arrangements or practices may create incentives for poor conduct or circumvent existing conflicted remuneration provisions? Are there remuneration practices associated with lead generation that pose a low risk of influencing financial advice, and should not be captured by reforms?

The clearest evidence of the link between remuneration arrangements and poor conduct can be found in the AFCA lead determination4 concerning Financial Services Group Australia (FSGA) - one of five lead determinations AFCA has issued in relation to advice given to clients invested in the Sheild and Guardian funds. In the FSGA determination, an unlicensed lead generator was found to have received 70 per cent of the initial advice fee and 40 percent of the ongoing advice fees paid by the consumer5. AFCA's panel reportedly found that the adviser had relied entirely on the lead generator's inquiries to establish the client's circumstances, despite the lead generator not operating under an AFSL. The arrangement is economically identical to the conduct the conflicted remuneration ban was designed to prevent but sits outside the ban because the fees are characterised as paid by the client. This is the pathway Option 3b should close.

Beyond direct fee splits, the arrangements warranting attention include non-monetary benefits flowing to advisers from lead generators (training, marketing support, technology, branded materials), client-flow arrangements where a lead generator delivers pre-qualified consumers in exchange for recommendations into particular products or platforms, and platform-level arrangements where investment platforms benefit from client flows without any direct payment between the platform and the lead generator. The form of the remuneration varies; the substance is the same.

Genuine fee-for-service arrangements between adviser and client, transparent referral arrangements within a single advice firm, and incidental referrals between professionals in the ordinary course of another service relationship should not be captured. The structural distinction is the one developed in response to Q2.

Q22. Would a broad prohibition that captures transactions beyond those that directly involve advice providers, product issuers/sellers and lead generators, be appropriate to curb misaligned incentives?

We are interpreting this question as: should the ban reach other intermediaries who profit from the funnel but aren't directly party to the adviser-issuer-lead-generator transactions? In the case of Shield and Guardian, other intermediaries like platforms and managed investment schemes did indeed benefit from an ecosystem / funnel, without being party to direct adviser-issuer-lead generation transactions. For example, payments from the platform to the adviser and from the platform to the MIS could ultimately be on paid to lead generators as fee for services provided.

Limiting the ban to specific actors within the lead generation funnel creates loopholes that can be exploited to circumnavigate the ban. A broader prohibition that covers the full range of individuals contributing to the conduct is required. Per our recommendations around advertising, trustees and

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[4] AFCA publishes video update and Lead Decisions on Shield and First Guardian complaints | Australian Financial Complaints Authority (AFCA)

[5] IFA on 7 January 2026 and Professional Planner on 23 January 2026) The report quotes the determination directly: *"Mr C relied on information he had 'been passed' from the financial firm's 'referral partner', otherwise known as a lead generator (who received 70 per cent of the initial advice fee the complainant paid, and 40 per cent of ongoing advice fees).*

licensees should be held responsible for the conduct and representations of third parties whose actions directly benefit the product issuer and/or advice licensee.

Q23. How would broadening the definition of 'benefit' impact remuneration practices?

The definition of benefit must be broad enough to capture informal remuneration arrangements, including non-monetary benefits. However, as stated above, it is SMC's view that the most important expansion of the meaning of "benefit" is narrowing the meaning of the "benefit given by client" exemption.

Q24. Of the approaches canvassed under reform 3, which option or combination of options would achieve the best balance between consumer protections, while facilitating consumer choice and minimising regulatory burden?

Within Reform 3, the most important single change is narrowing the "benefit given by client" exemption under Option 3b — fees deducted from a consumer's super balance are currently characterised as fees from the client rather than from the product issuer, sitting outside the conflicted remuneration ban; reversing this removes the doctrinal hook on which the licensed-operator model hangs. Option 3a should sit alongside it to capture lead generators within the conflicted remuneration framework.

'Target advertisements for earlier intervention' - section

Q25. Would requiring superannuation advertisements to display an AFS licence number, be an effective way to curb lead generation and improve transparency for consumers?

Within Reform 4, both options should be implemented as complementary measures: mandatory AFSL display under Option 4a is a baseline transparency reform consistent with the Scams Prevention Framework's digital platform advertiser verification obligations, and the expansion of ASIC's stop-order powers under Option 4b — with the threshold set at "reasonably believes the advertisement has caused or is likely to cause substantial consumer harm" — closes the timing gap between harm and regulatory intervention that has been the most consistent failing of the existing regime.

While display of an AFSL provides an important transparency mechanism for consumers to be able to verify that an advertisement is placed by a legitimate licensee, it is more likely to be relied upon by regulators in their oversight of licensees making false and misleading statements in financial advertising. Including an AFSL creates line of sight and accountability. The direct value to the consumer is in bringing such advertising within the regulated environment. Licence numbers and disclaimers typically form the small print of ad placements. The question is not whether such details need to be included within the placement itself, but whether any landing page, collection form or other receptacle for translating an ad click-through into a mechanism for action should clearly and unambiguously contain such information before a consumer choses to engage beyond the curious click-through.

Q26. What practical implementation issues or costs would arise for advertisers, publishers and licensees?

Some advertising formats do not naturally lend themselves to the inclusion of lengthy disclosures — a small branded web tile, a listing on a comparison website, or a short-form social media placement, for example. As noted above, the purpose of including AFSL numbers in such advertisements is to provide transparency and accountability for the placement, in circumstances where the true commercial purpose of the advertisement may otherwise be obscured. This can be addressed by ensuring that click-throughs lead consumers to landing points with clear and appropriate disclosure, so that the licence identification at the point of advertisement is reinforced by full disclosure at the point of engagement.

Beyond the format question, implementation costs for compliant operators should be modest. Display of an AFSL number is a low-friction obligation, comparable to existing requirements for general advice warnings. The greater design challenge sits on the publisher and platform side: ensuring digital platforms have practical mechanisms to verify AFSL numbers in real time and prevent display of non-compliant advertisements. This should be aligned with the Scams Prevention Framework work rather than duplicated under a separate regime.

Q27. Would a broad prohibition on advertisements in relation to superannuation without an AFS licence unduly constrain legitimate advertising?

No. Legitimate advertising in relation to superannuation is currently undertaken by fund trustees, with clear general advice warnings, AFSL details, and branding that identifies the fund. Digital news sites identify paid content with click-throughs to the sites of the sponsoring organisations. Journalism, consumer education content (e.g. Moneysmart), and factual comparison content sit outside the advertising regime entirely.

Third parties placing unlicensed advertising that does not clearly identify the end product or service raises legitimate red flags about the suitability of that content for consumer engagement. The legitimate advertising base is held by AFSL holders, and a prohibition on unlicensed superannuation advertising aligns the regulatory perimeter with that fact rather than constraining genuine commercial activity

Q28. In relation to ASIC's stop order power, what threshold test would be appropriate to ensure that ASIC's stop order powers are exercised proportionately and do not unduly restrict legitimate advertising?

SMC supports the expanded stop order power in principle. Reactive enforcement has proven inadequate to address the speed and scale of digital lead generation, and the existing stop order regime – which requires ASIC to establish that an advertisement is misleading or deceptive on its own terms – does not reach the chain-based harm produced by the Shield and First Guardian model.

The "reasonably believes substantial consumer harm" threshold proposed in Option 4b is the right calibration. It lets ASIC act on the chain rather than only on the advertisement, while the "substantial consumer harm" qualifier reserves the power for material misconduct rather than routine advertising disputes.

To support proportionate use of the power, ASIC should develop and publish clear triggering criteria, so that legitimate advertisers can anticipate the kinds of conduct that may prompt regulator intervention. A short but meaningful notice period and a merits review pathway should also be available before stop orders take effect, except in cases of imminent or ongoing consumer harm where immediate action is required. These procedural safeguards provide proportionate protection against overreach without blunting the responsiveness the expanded power is intended to deliver.

Q29. Are there any other changes to the regulation of financial advertisements that would better address emerging risks associated with lead generation practices?

SMC has no further suggested changes, other than those already covered above.